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June 15, 2007

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Portals
Washington, DC 20554

**Re: Ex Parte Communication, *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172;
Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223**

Dear Secretary Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on June 14, 2007, Frances E. McComb of Cavalier Telephone Corporation along with Russell M. Blau and Philip J. Macres of Bingham McCutchen LLP on behalf of a group of CLECs,¹ had separate meetings with Mr. Ian Dillner, Legal Advisor to Chairman Martin; Mr. Nick Alexander, Legal Advisor to Commissioner Tate; Mr. Scott Bergmann, Legal Advisor to Commissioner Adelstein; Mr. Scott Deutchman, Legal Advisor to Commissioner Copps; Mr. John Hunter, Legal Advisor to Commissioner McDowell; and the following individuals from the Competition Policy Division, Wireline Competition Bureau: Deena Shetler, Christie Shewman, Pamela Megna, and Jeremy Miller. During the meetings, we presented the views set forth in the attached document and also presented views that were consistent with previous filings made by these parties in this proceeding. In addition, we urged the Commission to grant the October 11, 2007 Motion to Modify the Protective Order that is pending in WC Docket No. 04-223.

¹ Alpheus Communications, L.P.; ATX Communications, Inc.; Broadwing Communications, LLC; Cavalier Telephone Corporation; CloseCall America, Inc.; DSLnet Communications, LLC; Eureka Telecom, Inc. d/b/a InfoHighway Communications; ITC^DeltaCom Communications, Inc.; McLeodUSA Telecommunications Services, Inc.; Megapath, Inc.; Norlight Telecommunications, Inc.; Penn Telecom, Inc.; RCN Telecom Services, Inc.; RNK Inc.; segTEL, Inc.; Talk America Holdings, Inc.; TDS Metrocom, LLC; and U.S. Telepacific Corp. d/b/a Telepacific Communications.

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June 15, 2007
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Very truly yours,

A handwritten signature in blue ink, appearing to read "Philip J. Macres", written in a cursive style.

Philip J. Macres

Attachment

cc: Ian Dillner (all via e-mail)
Nick Alexander
Scott Bergmann
Scott Deutchman
John Hunter
Pamela Megna
Jeremy Miller
Deena Shetler
Christie Shewman

WC Docket No. 06-172
Verizon Forbearance Petitions
(Boston, Providence, New York, Philadelphia, Pittsburgh, Virginia Beach
MSAs

Ex parte presentation on behalf of:

Alpheus Communications, L.P.
ATX Communications, Inc.
Broadwing Communications, LLC
Cavalier Telephone Corporation
CloseCall America, Inc.
DSLnet Communications, LLC
Eureka Telecom, Inc. d/b/a InfoHighway
Communications
ITC^DeltaCom Communications, Inc.
McLeodUSA Telecommunications Services,
Inc.

MegaPath, Inc.
Norlight Telecommunications, Inc.
Penn Telecom, Inc.
RCN Telecom Services, Inc.
RNK Inc.
segTEL, Inc.
Talk America Holdings, Inc.
TDS Metrocom, LLC
U.S. Telepacific Corp. d/b/a Telepacific
Communications

June 14, 2007

Parties' APA rights are impaired by inability to cite *Omaha* Order

- Verizon claims that “in each of the six MSAs competition is even more advanced than it was in Omaha....” (Reply Comments, p.1)
 - No party (including Verizon) can confirm or rebut this claim without violating the *Omaha Protective Order*.
 - Protective Order expressly prohibits “use” of confidential information in any other administrative proceeding.
 - All of the market data on which the Commission relied in Omaha was stamped Confidential.
- Motion to modify Protective Order has been pending in WC Docket No. 04-223 since last October
 - Commission’s failure to act impairs ability of parties to participate in this docket
 - Any discussion of Omaha confidential information should be subject to this docket’s protective order, so that confidentiality interests of Qwest and Cox can continue to be protected

Verizon's use of E911 data is both unlawful and misleading

- Verizon abused its position as E911 administrator to use confidential data to bolster its regulatory advocacy
 - This data was provided for emergency services use only
- Apart from confidentiality, there are also serious doubts about accuracy of Verizon's market share claims based on this data
 - E911 database not designed to track market share
 - Records telephone numbers, not line counts
 - Verizon uses the database to measure its competitors' share, but not its own: comparing apples to oranges
 - Verizon admits that it used projections, not actual data, in some markets

Verizon did not make a *prima facie* showing for UNE forbearance

- *Omaha* Order established a clear standard for UNE relief based on facilities-based penetration at the wire center level
 - Verizon's initial filing provided no wire center data, even though it was on notice of the standard
 - Verizon has the burden of proof, and UNE relief should be denied based solely on its failure to offer relevant evidence

Verizon remains dominant in each of the six MSAs

- Verizon claims “more advanced” competition by defining the market differently than the Commission did in Omaha
 - Publicly available data suggests that Verizon has greatly overstated competitive market share
 - Non-facilities competition is irrelevant to the UNE forbearance standard: only facilities-based competition should be considered
 - Wireless is not a substitute for most business services, or broadband, and should not be considered in the UNE forbearance analysis

UNEs are more important in the six MSAs than in Omaha

- In both Omaha and Anchorage, UNE-based competition was not a significant factor in the market
- In the six Verizon MSAs, many CLECs rely heavily on UNEs
 - Verizon overstates special access demand by counting DS1 and DS3 voice equivalents, ignoring broadband over UNE loops
 - Outside of core business districts, there are hardly any CLEC-lit buildings in these MSAs

UNE Forbearance Would Harm, not Protect, Consumers

- Many users would face substantial and immediate rate increases upon withdrawal of UNE access
 - Section 10(a)(1) finding that competition is sufficient to protect consumers against unreasonable rates could not be justified
- Consumers would lose access to existing and forthcoming UNE-based advanced services, including DSL, Ethernet, and video
 - Section 10(a)(2) finding that unbundling is unnecessary to protect consumers could not be justified
- Commission must consider whether forbearance will “enhance competition”
 - Eliminating competitors from the market and reducing consumer choice will not enhance competition